

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**LEAR RENOSOL SELMA
MANUFACTURING FACILITY**

and

Case 15-CA-146313

**INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE & AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA**

ORDER¹

The Employer's petition to revoke subpoena duces tecum B-1-NVOXOL is denied. The subpoena seeks information relevant to the matters under investigation and describes with sufficient particularity the evidence sought, as required by Section 11(1) of the Act and Section 102.31(b) of the Board's Rules and Regulations. Further, the Employer has failed to establish any other legal basis for revoking the subpoena. See generally *NLRB v. North Bay Plumbing, Inc.*, 102 F.3d 1005 (9th Cir. 1996); *NLRB v. Carolina Food Processors, Inc.*, 81 F.3d 507 (4th Cir. 1996).

We reject the Employer's argument that the subpoena must be revoked, or a protective order entered, because the Region's investigation is in violation of the Memorandum of Understanding Between OSHA and NLRB, 40 FR 26083 (June 20, 1975) (the MOU). The MOU states in relevant part that "[w]here a charge involving issues covered by Section 11(c) of the OSH Act has been filed with the General Counsel and a complaint has also been filed with OSHA as to the same factual matters, the General Counsel will, absent withdrawal of the matter, defer or dismiss the charge." However, and contrary to the dissent, we find that the MOU does not require the Region

¹ The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

to determine whether to defer or dismiss such charges, or engage in consultations with the Solicitor of Labor concerning deferral or dismissal, without having investigated the facts and circumstances surrounding the allegations.

Dated, Washington, D.C., January 14, 2016

KENT Y. HIROZAWA, MEMBER

LAUREN McFERRAN, MEMBER

Member Miscimarra, dissenting in part:

I would grant the petition to revoke in part.¹ The MOU identifies certain procedures to be followed, depending on the circumstances, in cases where a charge filed with the Board involves issues that are also covered by Section 11(c) of the OSH Act. Although the MOU does not explicitly indicate when compliance with these procedures is to occur, in light of its stated goal of “obviate[ing] duplicate litigation,” I believe the MOU requires the General Counsel to comply with these procedures before the Region conducts any investigation.

Here, the amended charge includes both allegations that raise issues covered by Section 11(c) of the OSH Act, as well as allegations that involve issues solely related to the NLRA. In my view, the relevant MOU paragraph is B-4, which states that “[w]here a charge has been filed with the General Counsel which includes both issues covered by Section 11(c) of the OSH Act and matters within the exclusive jurisdiction of the General Counsel, the General Counsel and the Office of the Solicitor of Labor will consult in order to determine the appropriate handling of the matter.” In this case, there is no evidence that such a consultation has taken place. Accordingly, I would grant the

¹ In its petition, the Employer states it has not objected to subpoena paragraphs 4 and 7. Therefore, I would deny the petition as to those paragraphs.

petition to revoke in part. Given the General Counsel's assertion here that "the totality of the circumstances must be considered" to determine the merits of the allegations that arise solely under the NLRA, I would not attempt to sort out which aspects of the subpoena seek evidence related to issues covered by Section 11(c) of the OSH Act, and which seek evidence limited to matters within the exclusive jurisdiction of the General Counsel. However, I would grant the petition to revoke in part without prejudice to the Region's reissuance of the subpoena following the consultation prescribed in the MOU.

Dated, Washington, D.C., January 14, 2016

PHILIP A. MISCIMARRA, MEMBER